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July 13, 2001

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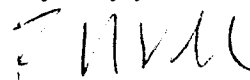
Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Ratepayer Parity Trust Fund Rulemaking, D.T.E. 01-45

Dear Ms. Cottrell:

Enclosed please find an original and 15 copies of the Reply Comments of Fitchburg Gas and Electric Light Company for filing in the above referenced proceeding.

Very truly yours,


Patricia M. French

Enclosure

cc: Hon. James Connelly, Chairman
Hon. W. Robert Keating, Commissioner
Hon. Diedre K. Manning, Commissioner
Hon. Eugene J. Sullivan, Commissioner
Hon. Paul B. Vasington, Commissioner
Andrew O. Kaplan, Hearing Officer
Joseph Rogers, Assistant Attorney General
Matthew Morais, Esq.
John Cope-Flanagan, Esq.
Steve Klionsky, Esq.
Amy Rabinowitz, Esq.
Robert N. Werlin, Esq.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RATEPAYER PARITY TRUST FUND RULEMAKING) D.T.E. 01-45

REPLY COMMENTS OF
FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

I. INTRODUCTION

The Department of Telecommunications and Energy ("Department") opened this docket and requested comments from the public and interested parties relative to the implementation of regulations and procedures for the distribution of monies contained in the Ratepayer Parity Trust Fund ("Trust"), established pursuant to Stat. 1997, ch. 164 (the Electric Restructuring Act). Notice of Inquiry and Publication, D.T.E. 01-45 (2001). On June 29, 2001, pursuant to the Department's Order, the Office of the Attorney General, the Cape Light Compact and the electric distribution companies in Massachusetts including Fitchburg Gas and Electric Light Company ("FG&E") filed initial comments. Pursuant to the Department's invitation, these comments constitute FG&E's reply.

II. REPLY COMMENTS OF FG&E

A. Overview

FG&E reiterates that its initial comments made clear its understanding that the Trust was established to ensure that the anticipated benefits of the Electric Restructuring Act were shared by all the citizens of the Commonwealth. FGE Initial Comments at 2. As the Department's Notice of Inquiry referenced, the statute specified that there was a

potential for some distribution companies to have more difficulty than others in bringing the benefits of restructuring to their customers and that the intent of the Trust was to assist in achieving parity among the body of distribution company customers in the Commonwealth. There is a direct correlation between the difficulty that some companies have had in achieving the short term benefits of electric restructuring for their customers through the 15% rate reduction required by the Act and the extraordinarily high level of long-term, deferred cost balances incurred by those companies. The recovery of these deferred balances, plus accumulated interest, from the customers of these companies will perpetuate the lack of parity into the future unless the deferred balances are reduced currently.

FG&E believes that most of the commentaries concur that ratepayers would benefit if there were monies available to reduce the deferrals created to meet the 15 percent rate reduction required by the Electric Restructuring Act, or otherwise to reduce the transition obligation on customers. See Attorney General Comments at 2 (supports retaining the Trust and applying monies to deferrals); Massachusetts Electric Company and Nantucket Electric Company (together "MECo") Comments at 5; Western Massachusetts Electric Company ("WMECo") Comments at 2 (funds should be used to assist customers in reducing transition costs); NSTAR Comments at 3; Cape Light Compact Comments at 2. Since this common goal exists among all the commentaries, the Department should seek ways to use the balance currently awaiting transfer to the Trust (approximately \$66 million based on responses to question 6) as well as future balances to assist all ratepayers in paying the costs expended to transition to a competitive electric industry.

B. The Concept of Parity and the Process of Trust Distribution

While the issue of the purpose of the Trust appears to be settled among the parties filing initial comments, that is, to assist ratepayers in paying for the transition costs to a competitive electric industry, two important discrepancies among the commentaries emerge from a review of the filed comments. The first is who should benefit from the Trust. The second is the process by which the ratepayers of a designated distribution company are eligible to receive monies from the Trust.

With regard to the first issue, there is a clear difference between the commentaries as to who should benefit from the Trust disbursements. As FG&E stated, FG&E believes that the Trust monies should be disbursed to ratepayers to bring the ratepayers throughout the state in parity with one another relative to the burden of the deferred transition expense. FG&E Comments at 7. MECo and WMECo advocate that the monies should be disbursed in relation to the contribution made to the Trust by a specific company's asset sales. MECo Comments at 2; WMECo Comments at 5-6. The positions of MECo and WMECo are understandable, but patently do not address legislative intent.

In G.L. c. 10, sec. 62, the General Court established the Trust as a "Ratepayer Parity" Trust indicating its specific intent. To have "parity" means to have "the quality or state of being equal or equivalent," and "the equality of purchasing power established by law between different kinds of money at a given ratio." Merriam-Webster's Dictionary (2001). The General Court established the Trust on the books of the Commonwealth, identifying that all amounts received would be "held in trust . . . for the purpose of providing extraordinary assistance in achieving the required rate reduction" under the Electric Restructuring Act. G.L. c. 10, sec. 62. In creating the Trust, the Legislature

recognized that some companies would have more difficulty than others in achieving the 15% rate reduction. This legislative intent indicates that monies deposited into the Trust would become essentially a general fund created to bring benefits to all electric customers, regardless of rate class, of all the companies in the Commonwealth. The legislation does not identify the beneficiaries of the Trust, but it is indisputable that the General Court intended that ratepayers who were not experiencing real and sustainable rate reductions as expected by the Act's implementation would be eligible. Perhaps in this respect, FG&E, MECo, NSTAR and WMECo agree. Even the Attorney General appears to agree that the goal is meritorious.

However, the General Court expressed its intent to benefit the public at large, and not merely certain ratepayers, in FG&E's view, by establishing the Electric Restructuring Act under a preamble citing the public import to all of the Commonwealth's citizens of a competitive retail electric industry. See Opinion of the Justices, 341 Mass. 738 (1960)(public purpose properly set out justifies tax method). Consistent with this goal, the General Court set aside tax monies of the Commonwealth for the stated public purpose of achieving parity among ratepayers. It did not create another type of recovery mechanism that might direct monies to certain beneficiaries more particularly, although other methods were available and known to it, to wit, energy efficiency surcharges. See G.L. c. 25, sec. 19 (energy efficiency surcharge); G.L. c. 25A, sec. 11G (oversight of Division of Energy Resources) compare with G.L. c. 40J, sec. 4E (Massachusetts Renewable Energy Trust Fund ("RET")); G.L. c. 25, sec. 20 (mandatory per kWh charge for renewable energy to fund the RET). This difference in treatment shows further legislative intent to provide the Trust proceeds for a public purpose, and not hold these

monies for tracking and an eventual direct utility-specific refund. See e.g. A. Magnano v. Hamilton, 292 U.S. 40, 54 S.Ct. 599 (1934)(use of revenue from a tax must denote a public, not private purpose); Cole v. La Grange, 113 U.S. 1, 5 S.Ct. 416 (1884)(taxation is a taking by the state for public purpose ends).

Absent the establishment of the Trust, the tax dollars received from the sale of assets would have contributed to the general fund of the Commonwealth and serve a purpose to benefit the general public, as the General Court saw fit. See G.L. c. 10, sec. 62 (personal and corporate tax revenues from asset sales are credited to the Trust). Taxes by application and effect (regardless of who pays them) are put to uses that enhance and benefit broader public purposes. See, e.g. Milheim v. Moffit Tunnel Improvement District, 262 U.S. 710, 718, 43 S.Ct. 694, 698 (1923)(public, not private purpose, warrants the exercise of the power of taxation). The direct implication for the Department is that such dollars, properly transferred to the Trust, are now intended to assist ratepayers in all parts of the Commonwealth who (through the application of their electric distribution company) are able to demonstrate the need for "extraordinary" measures to achieve parity before full retail competition. G.L. c. 10, sec. 62. Accordingly, FG&E believes that the General Court intended that the Department to provide a broader application of the Trust disbursements to ensure that parity among all electric ratepayers is achieved, and that the burdens in achieving a fully competitive retail electric market are more equitably balanced.

With regard to the second issue, the Attorney General argues for an amendment to the Statute and NSTAR raises a concern over the process of Trust distribution. FG&E is unconvinced that the statutory language requiring appropriation requires the Department

to pursue General Court approval for the manner and type of distributions. According to G.L. c. 164, sec. 1G,

the [D]epartment may, upon petition of a company unable to comply with the rate reduction required under subsection (b) of section 1B, certify that the petitioner is eligible to receive funds from the Ratepayer Parity Trust Fund, established pursuant to section 62 of chapter 10. The [D]epartment shall, in cooperation with the secretary of administration and finance, promulgate regulations to establish a procedure to disburse monies appropriated from said trust fund.

Read in conjunction with G.L. c. 10, sec. 62, which requires appropriation by the General Court, FG&E believes that the General Court intended for the Department to use its expertise to determine the basis for "extraordinary assistance," and to evaluate whether, in light of significant deferrals, the 15 percent rate reduction required under the Act was being achieved on a sustainable basis by all the distribution companies in the Commonwealth. According to the relevant statutory provisions, read for their plain meaning, the Department should proceed, as it has, to promulgate regulations that define the scope and process for determining whether a company (and more importantly, its ratepayers) are in need of "extraordinary assistance." G.L. c. 164, sec. 1G. These regulations will be created in cooperation with the Secretary of Administration and Finance. G.L. c. 164, sec. 1G.

Once the Department promulgates rules, and makes a Trust distribution determination, it certifies to the Secretary "a request for distribution of such monies . . . as may be available for appropriation." G.L. c. 10, sec. 62. FG&E believes that the Department's review of meritorious applications for disbursement of monies from the Trust meets the legislative intent. In FG&E's view, the Department has begun the

process exactly as envisaged by the General Court: it has commenced a rulemaking pursuant to G.L. c. 164, sec. 1G.

III. CONCLUSION

Wherefore, having provided its initial and reply comments, Fitchburg Gas and Electric Light Company appreciates the opportunity to respond to the Department's June 11, 2001 Notice of Inquiry and Publication, and requests that the Department give due notice and consideration to the concerns and opinions expressed herein.

Respectfully submitted,

FITCHBURG GAS AND
ELECTRIC LIGHT COMPANY

By its attorneys,



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Dated: July 13, 2001

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